

B. Regarding PSTN-to-IP Scenarios, the Commission Should Resolve Any Alleged Ambiguity In Favor Of Finding That The IP-Enabled Service Provider Has The Compensation Obligation Under The Rule

In the “PSTN-to-IP” scenarios, as discussed above, the call looks exactly like a “PSTN-to-PSTN” communication until it reaches the called party, when, instead of terminating over the PSTN to an ordinary telephone, the call terminates over a broadband connection to a computer or specialized IP-enabled telephone. In all other respects, the call appears no different from an ordinary dial-around call. In the access code example, the payphone caller dials a ten-digit toll-free number, reaches a calling card or prepaid card platform, provides billing information, and dials the called party’s ten-digit telephone number. The card holder is billed in the same manner as in a PSTN-to-PSTN communication. In these and other respects, the communication appears to the parties no different from an ordinary circuit-switched telephone communication.

As discussed above, in the typical access code calling scenario, the fact that a call terminates on a broadband connection to a computer, specialized IP phone, or conventional CPE via a terminal adapter, is wholly incidental to the nature of the service offered. The prepaid card and calling card services that utilize access codes are typically intended to be used ubiquitously to call from any location to virtually anywhere in the world. When an access code call made from a payphone is terminated in IP, the fundamental character of the communications service remains unchanged. The same dialing patterns are used, the same billing arrangements apply, and there is no more deviation from straightforward two-way voice-only communications than there would be with an IP-enabled call that terminates as a circuit-switched call on the PSTN.

1. Where Termination in IP Is Incidental To The Nature Of The Service, The IP-Enabled Service Provider Is A Completing Carrier And Has The Payment Obligation Under The Compensation Rule

Although the Commission’s rulings on classification of IP-enabled services do not directly address the regulatory classification of PSTN-to-IP services, the logic of those rulings compel a finding that PSTN-to-IP should be treated the same as PSTN-to-PSTN, at least in the

dial-around context. The Commission established the framework for its analysis In the 1998 *Stevens Report*.¹⁷ There, the Commission addressed phone-to-phone IP-enabled services and found, on the record before it, “that this type of IP telephony . . . bear(s) the characteristics of ‘telecommunications services.’” *Id.* ¶ 89. While the *Stevens Report* did not specifically address PSTN-to-IP calls, all of the factors that the Commission identified as the basis for its finding phone-to-phone IP-enabled calls appear to be telecommunications are equally applicable to PSTN-to-IP dial-around calls. The Commission found phone-to-phone IP-enabled calls include services in which the provider meets the following conditions:

- (1) it holds itself out as providing voice telephony or facsimile transmission service; (2) it does *not* require the customer to use CPE different from that CPE necessary to place an ordinary touch-tone call; (3) it allows the customer to call telephone numbers assigned in accordance with the North American Numbering Plan and associated international agreements; and (4) it transmits customer information without net change in form or content.

Id. ¶ 88.

PSTN-to-IP dial-around calls meet all four factors: they are voice calls, placed from a payphone, to a NANP number, and the “customer information,” i.e. the voice communication between the payphone user and the called party is transmitted without any change in form or content. While there is a net protocol conversion, it simply allows for the intercommunication between two different networks. The conversion does not change the form or content of the information and is wholly transparent to both the caller and the called party. As the Commission found to be the case with phone-to-phone IP-enabled calls, “[f]rom a functional standpoint,” PSTN-to-IP dial-around callers, “obtain only voice transmission, rather than information services such as access to stored files.” *Stevens Report* ¶ 89. And, as with phone-to-phone IP-enabled

¹⁷ *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501 (1998).

calls, IP-enabled providers transmitting PSTN-to-IP dial-around calls “do[] not offer a capability for generating, acquiring, storing, processing [beyond the format conversion itself], retrieving, utilizing, or making available information.” *Id.*

IP-to-PSTN dial-around calls similarly meet all of the factors identified in *AT&T*, again with the exception that there is a net protocol conversion. *See AT&T* ¶ 12. However, nowhere did the Commission say in *AT&T* that, had there been a net protocol conversion, the service would have been transformed into an information service. Indeed, it is apparent from the thrust of the Commission’s discussion that phone-to-phone IP-enabled calls are a telecommunications service because they amount to no more than the simple transmission of voice communications between the caller and called party. This is equally true with respect to phone-to-IP dial-around calls; the protocol conversion that allows for the intercommunication between two network protocols simply undergirds the basic transmission of information.

The Commission has long held that where enhanced or information service functions are “incidental” to an underlying telecommunications service and do not alter their “fundamental character,” the inclusion of such functions does not transform an otherwise basic service into an enhanced or information service.¹⁸ Similarly, the Commission has held that if a service involves

¹⁸ *See, e.g., AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*, Order and Notice of Proposed Rulemaking, WC Docket No. 03-133, FCC 05-41, ¶16 (rel. February 23, 2005); *Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*, CC Docket No. 91-115, Report and Order and Request for Supplemental Comment, 7 FCC Rcd 3528, 3531, ¶ 19 (1992) (validation and screening services are “incidental” to the provision of local exchange access service and therefore subject to Title II regulation); *North American Telecommunications Association Petition for Declaratory Ruling Under § 64.702 of the Commission’s Rules Regarding the Integration of Centrex, Enhanced Services, and Customer Premises Equipment*, ENF 84-2, Memorandum Opinion and Order, 101 FCC 2d 349, 359-361, ¶¶ 24-28 (1985) (services that “facilitate the provision of basic services without altering their fundamental character” are not considered enhanced services), *recon.*, 3 FCC Rcd 4385, 4386, ¶¶ 8-9 (1988); *Beehive Telephone v. The Bell Operating Companies*, File No. E-94-57, Memorandum Opinion and Order, 10 FCC Rcd 10562, 10566, ¶ 21 (1995) (“services that are incidental or adjunct to the

net protocol conversion, but that net conversion serves to facilitate the piecemeal introduction of new technology into the PSTN and to maintain the compatibility of network services with CPE, then those net conversions are “outside the ambit of the enhanced [or information] services definition.”¹⁹

In short, the termination of an access code call in IP in the PSTN-IP scenarios described above is “incidental” to the telecommunications service provided, does not alter its “fundamental character,” and serves to facilitate the piecemeal introduction of packet switched technology into the network (by accommodating the fact that some CPE currently utilizes broadband, IP-based network connections while payphones generally do not yet use such connections). Therefore, the Commission should rule that the service provider who completes the call is properly classified as a “Completing Carrier” for purposes of the compensation rule, even though payphone calls using the access code may sometimes incidentally terminate a call in IP.

2. Interpreting The Compensation Rule To Require IP-Enabled Service Providers That Complete PSTN-to-IP Calls To Pay Compensation Serves The Purposes Of The Compensation Rule and Section 276

Even if the Commission is unwilling to find that any net protocol conversions in PSTN-IP dial-around calls are incidental, the compensation rule is at most ambiguous as to where the compensation obligation falls. For the reasons stated below, the Commission should interpret the rule to require the IP-enabled service provider to pay compensation.

(Footnote continued)

common carrier transmission service are to be regulated in the same way as the common carrier service”), *aff’d on remand*, Memorandum Opinion and Order, 12 FCC Rcd 17930 (1997).

¹⁹ *Independent Data Communications Manufacturers Association, Inc., Petition for Declaratory Ruling That AT&T’s Interspan Frame Relay Service Is a Basic Service*, 10 FCC Rcd 13717, 13719 ¶15 (1995); see also *Amendment of Section 64.702 of the Commission’s Rules and Regulations (Third Computer Inquiry), Phase II*, Report and Order, 2 FCC Rcd 3072, 3082 (1987).

The Commission has previously determined that:

we can best ensure “fair compensation” for every “completed call” by requiring the entity that: (1) is the primary economic beneficiary of PSP services; and (2) has control over the most accurate call completion data to compensate the PSP.

Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order, 17 FCC Rcd 19975, 19987, ¶ 26 (2003) (“*Tollgate Order*”). In the *Tollgate Order*, the Commission chose to replace the previous compensation rule, under which the “first facilities-based interexchange carrier” had the obligation to pay compensation. The Commission rejected this earlier rule because it failed to satisfy the two conditions stated above. In situations where another carrier was responsible for completing the call, the Commission found it was unfair to impose the payphone compensation obligation on the first facilities-based carrier. In addition, where the first facilities-based carrier delivers an access code call to another carrier’s call processing platform, the Commission found that the first facilities-based carrier lacked the ability to track the call to completion. *Tollgate Order* at 19988, ¶ 27.

When an IP-enabled service provider completes a dial-around call, it is the “primary economic beneficiary” the same as any “Completing Carrier” for a circuit-switched dial-around call. Moreover, like the Completing Carrier in circuit-switched scenarios, the completing IP-enabled service provider is better situated than other carriers/service providers involved in the call to determine whether the call is completed. Therefore, in order to serve the purposes of the rule, the Commission should interpret the compensation rule to require IP-enabled service providers to pay for dial-around calls that they complete.

Requiring IP-enabled service providers to pay compensation when they complete dial-around calls also serves the purposes of Section 276. When multiple service providers are involved in a call, in order to ensure that PSPs are fairly compensated, it must be feasible for PSPs as well as the various service providers in the call chain to determine which service

provider has the obligation to pay compensation to the PSP. A rule that assigns liability differently based on whether the call terminates over the PSTN or broadband facilities would make it quite difficult, if not impossible, for PSPs and Intermediate Carriers – and in some cases even the Completing Carrier itself – to determine which entity has the compensation obligation.²⁰ By contrast, a rule that assigns liability based on which service provider completes the call makes it relatively easy to determine who has the compensation obligation.

Therefore, to the extent that there is ambiguity in the compensation rule, the Commission should resolve that ambiguity by interpreting the rule to require an IP-enabled service provider to pay compensation when it completes a dial-around call.

3. Interpreting The Compensation Rule To Require IP-Enabled Service Providers That Complete PSTN-to-IP Dial-Around Calls To Pay Compensation Is Consistent With The Considerations Discussed In The *IP-Enabled Services NPRM*

Interpreting the compensation rule to require IP-enabled service providers to pay compensation when they complete PSTN-to-IP dial-around calls is also consistent with the various considerations listed in the *IP-Enabled Service NPRM* as potentially bearing on the regulatory classification of IP-enabled services. In that NPRM the Commission listed the following factors as potentially useful in classifying IP-enabled services: functional equivalence to traditional telephony; substitutability; interconnection with the PSTN and use of the North American Numbering Plan (“NANP”); Peer-to-peer communications vs. network services; facility layer vs. protocol layer vs. application layer; common carriage vs. private carriage; use of the Internet; “primary line” vs. “supplemental line” service; and type of platform (wireline, wireless, cable, satellite) on which the service is provided. *IP-Enabled Services NPRM* ¶ 37.

²⁰ Indeed, in some situations, *e.g.*, where the IP-enabled service provider is the only “IXC” involved in the call, or where all the “IXCs” are IP-enabled, it might even be argued that no service provider has the compensation obligation.

To the extent that these considerations are relevant, they clearly favor classifying IP-enabled service providers as “Completing Carriers” subject to the compensation rule. The IP-enabled services accessed from payphones are all functionally equivalent to traditional telephony, and in fact are substitutable for traditional telephony. They all involve interconnection with the PSTN and use of the NANP; they are offered on a “common carrier” basis in the sense that they are accessible to any payphone user; the payphone is analogous to a “primary line,” not a “secondary line”; and the services are provided on traditional wireline platforms, which are generally the only type of platforms accessible from payphones.

* * *

For all these reasons, any ambiguities in the compensation rule regarding its coverage of IP-enabled service providers that complete dial-around calls should be resolved in favor of ruling that such service providers have the compensation payment obligation under the rule.

C. To The Extent That The Commission Finds IP-Enabled Service Providers Are Not Subject To Dial-Around Compensation Obligations, The Commission Must Rule That The Compensation Obligation Falls On The Carrier That Delivers A Call To An IP-Enabled Service Provider

If the Commission finds that the compensation rule does not require an IP-enabled service provider to pay for dial-around calls that the IP-enabled service provider completes, then the compensation obligation necessarily falls on the carrier that delivers a call to an IP-enabled service provider.

In adopting the current compensation rule, the Commission clearly intended to ensure that PSPs are compensated by some party for every dial-around call. It would be completely contrary to the Commission’s intent, and the requirements of the Act, for the Commission to conclude that there are circumstances where none of the service providers involved in a call has any obligation to compensate the PSP. Therefore, if the Commission finds that the IP-enabled

service provider does not have a compensation obligation, the Commission must find that the obligation falls on the carrier that delivers the dial-around call to the IP-enabled service provider.

This would be the result that most closely comports with the intent and language of the rule, if the Commission rules out the option of holding the IP-enabled service provider responsible. The rule requires a carrier to pay for calls that it completes. If the IP-enabled service provider is not subject to a compensation obligation because it is not classified as a carrier, then the IP-enabled provider is effectively an “end user” customer of the carrier that delivered the call to the IP-enabled service provider.²¹ Accordingly, the carrier that delivered the call to the IP-enabled platform is the “Completing Carrier” who “completes” the call to the IP-enabled service provider. Again, APCC believes the rule can and should hold the IP-enabled provider itself responsible for compensation. The Commission should assign responsibility to the carrier delivering the call to the IP-enabled provider if and only if the Commission classifies IP-enabled providers in such a manner so as to exclude them from the rule.

²¹ The Commission has long exempted information service providers from the payment of certain interstate access charges. See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*; Order on Remand and Report and Order, 16 FCC Rcd 9151, 9158, ¶ 11 (2001) (“*ISP Remand Order*”); see also *Access Charge Reform*, First Report and Order, 12 FCC Rcd 15982, 16133, ¶ 344 (1997) (*Access Charge Reform First Report and Order*). Consequently, information service providers are treated as end users for the purpose of applying access charges and are, therefore, entitled to pay local business rates for their connections to the LEC central offices and the PSTN. See *ISP Remand Order*, 16 FCC Rcd at 9158, ¶ 11; see also *Access Charge Reform First Report and Order*, 12 FCC Rcd at 16133-35, ¶¶ 344-48.

V. THE COMMISSION SHOULD AMEND THE COMPENSATION RULE TO CLEARLY REQUIRE ALL IP-ENABLED SERVICE PROVIDERS TO TRACK PAYPHONE CALLS AND TO PAY COMPENSATION FOR THE CALLS THAT THEY COMPLETE AND PROHIBIT INTERMEDIATE CARRIERS FROM INTERRUPTING THE DELIVERY OF FLEX ANI DIGITS OR OTHER PAYPHONE IDENTIFIERS FROM THE ORIGINATING LEC

In addition to issuing the declaratory ruling requested above, the Commission should immediately begin a rulemaking to amend the compensation rule to ensure that all IP-enabled service providers do have the compensation obligation when they complete dial-around calls. The Commission must take these steps in conjunction with one another because, if granted, the declaratory ruling would only apply to PSTN-originated dial-around calls and would leave unaddressed IP-originated calls. While there are currently no viable IP-enabled service options available to PSPs, it is possible that such alternatives will present themselves in the future. If the Commission does not ensure that PSPs receive dial-around compensation for IP-originated traffic, PSPs—who will not want to forgo a critical revenue stream—will effectively be relegated to the PSTN.

While Section 276 clearly requires that PSPs be compensated for the use of their phone regardless of how the payphone happens to be connected to the network, the Commission's evolving framework for IP-enabled communications has not yet addressed the regulatory status of IP-enabled calls. Unlike PSTN-originated calls, it is not clear that such calls will be treated as a telecommunications service. Therefore, the Commission must initiate a rulemaking proceeding to amend the current dial-around compensation rules to make clear that they apply to all communications originating from a payphone, regardless of whether the communication is classified as a telecommunications service.

In addition to being required by Section 276, as explained above, requiring an IP-enabled service provider to track and pay compensation when it completes dial-around calls furthers the purposes of the dial-around compensation rule. Specifically, holding the “completing” IP-

enabled service provider liable in the same manner as a “Completing Carrier” (1) ensures that compensation is paid by the primary beneficiary, (2) ensures that compensation is paid by a party who can track calls to completion, and (3) reduces the difficulty for PSPs and Intermediate Carriers in determining which entity has the compensation obligation.

The Commission should also ensure that IP-enabled service providers cannot claim that they are unable to pay dial-around compensation because they do not receive from their underlying IXC any Flex ANI digits identifying calls as a payphone-originated call. The Commission’s rules place the obligation to track dial-around calls for purposes of paying dial-around compensation squarely on the carrier that has the payment obligation.²² The Commission should make clear that IP-enabled providers involved in a dial-around call are fully subject to the tracking requirement. As part of that tracking obligation, the carrier is responsible for ordering Flex ANI digits and conducting tests to ensure that it is receiving FLEX ANI digits on calls from payphones.²³

By the same token, any IP-enabled service provider that has a payment obligation under the rule (either as currently drafted or as amended per this petition) is therefore required to ensure that it receives Flex ANI digits or equivalent payphone identifiers. Nevertheless, to make sure that failure of intervening carriers to forward Flex ANI digits is not cited as an excuse for non-payment, the Commission should amend its rule to require all providers in the call path,

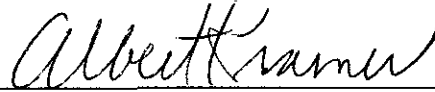
²² 47 CFR § 64.1310(a)(1) (“Each Completing Carrier shall establish a call tracking system that accurately tracks coinless access code or subscriber toll-free payphone calls to completion”).

²³ *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Memorandum Opinion and Order*, 13 FCC Rcd 4998 ¶ 37 (Com. Car. Bur. 1998) (“IXCs must request, test, and coordinate with LECs to obtain [FLEX ANI] service under carrier to carrier procedures to ensure that there are no problems in providing and receiving the FLEX ANI digits for a particular IXC or LEC”).

including IP-enabled providers, to forward Flex ANI digits to any service provider with which they interconnect.

Dated: March 23, 2005

Respectfully submitted,

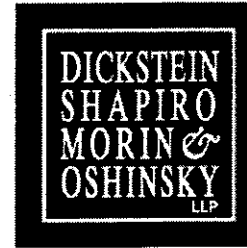
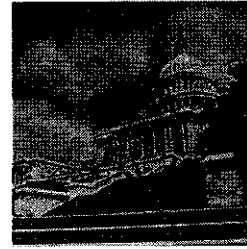
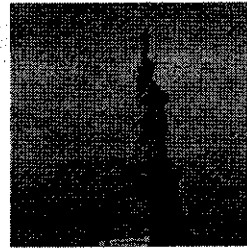
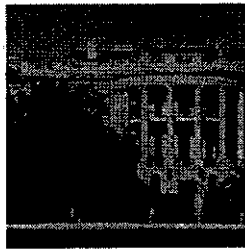
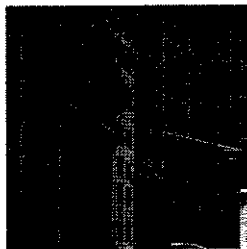
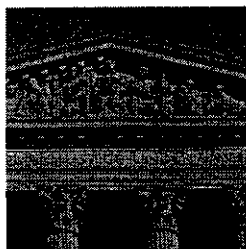
A handwritten signature in cursive script, reading "Albert H. Kramer". The signature is written in dark ink and is positioned above a horizontal line.

Albert H. Kramer
Robert F. Aldrich
Jacob S. Farber

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Communications Council*

ATTACHMENT 1



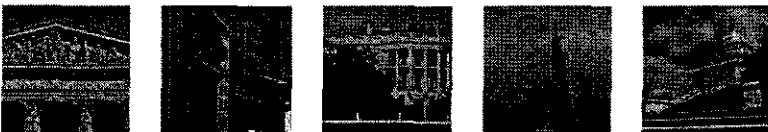
Legal Innovators

Payphone Dial-around Compensation and IP-enabled Services

American Public Communications Council
March 21, 2005

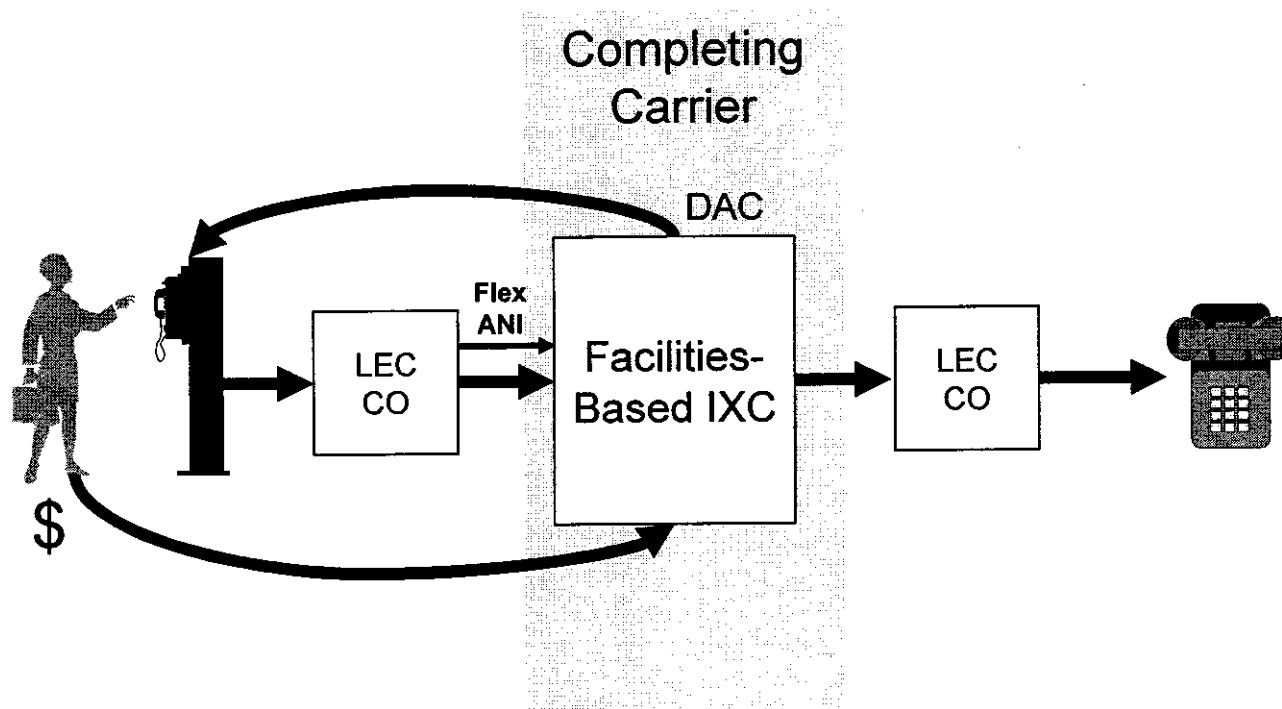
Traditional DAC Calls v. IP-enabled Provider Calls

- These slides compare diagrams of traditional dial-around compensation (DAC) calls to DAC calls including IP-enabled providers
- For each of the traditional DAC calls, the diagram shows how the existing DAC rules apply to determine which carrier in the call path bears the DAC obligation
- For each traditional DAC call scenario, there are multiple variants involving one or more IP-enabled providers



Conventional DAC Call: Calling Card or Prepaid Card Over Facilities-Based IXC

This is the most straight-forward conventional DAC scenario. There is only a single F-IXC in the call path, and that F-IXC is the Completing Carrier.

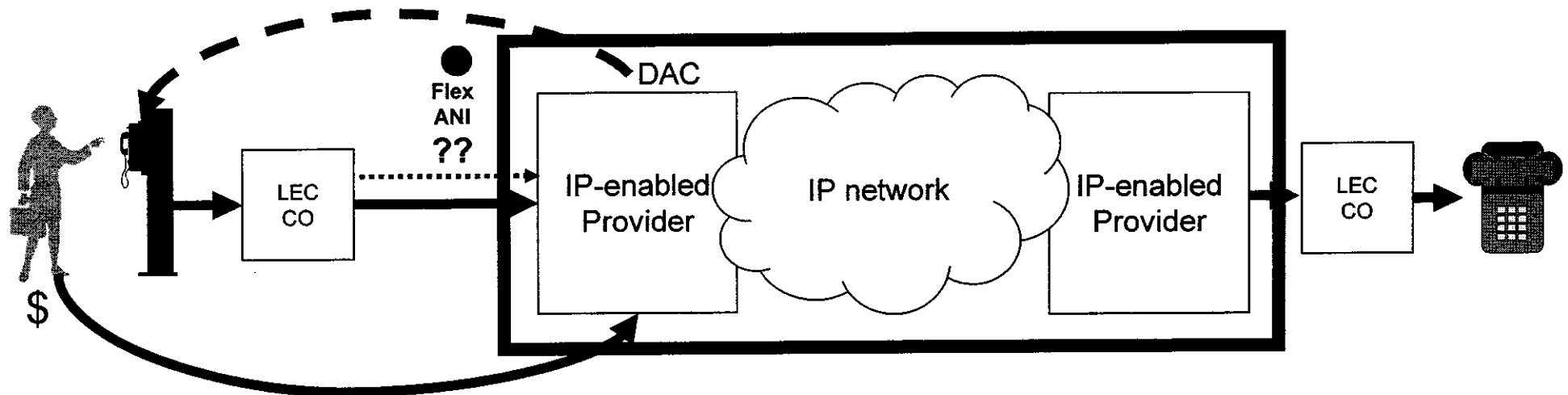


- Money flow
- Call flow
- Information flow



IP-Enabled DAC Call: Calling Card or Prepaid Card Over IP-enabled Provider to PSTN

Here, the IP-enabled Provider takes the place of the “Completing Carrier.” Nothing else changes. The caller is IP-enabled Provider’s end user. One example of this scenario is AT&T’s “IP-in-the-middle” long haul.



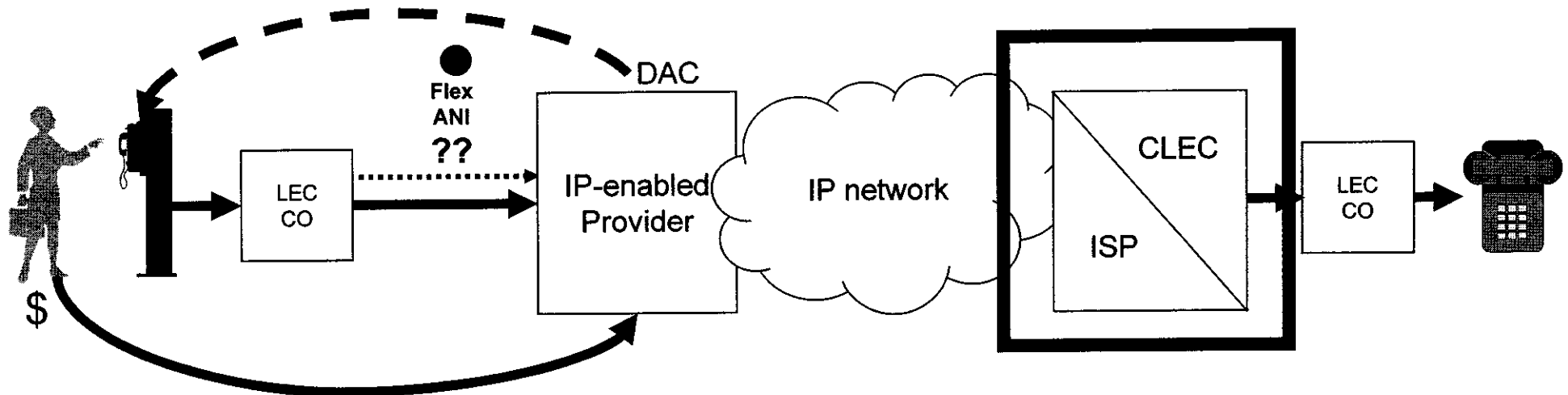
● LEC Sends Flex ANI. Unclear if IP-enabled Provider receives Flex ANI.

- Money flow
- Call flow
- Information flow



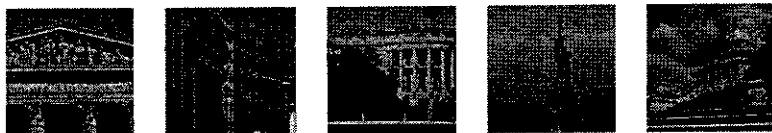
IP-Enabled DAC Call: Calling Card or Prepaid Card Over IP-enabled Provider to PSTN, Via Terminating ISP/CLEC

Again, in this scenario the IP-enabled Provider takes the place of the “Completing Carrier,” as before the caller is IP-enabled Provider’s end user. The only difference from the previous slide is that an ISP/CLEC hands the call to the terminating LEC, which should not affect PSPs’ right to DAC.



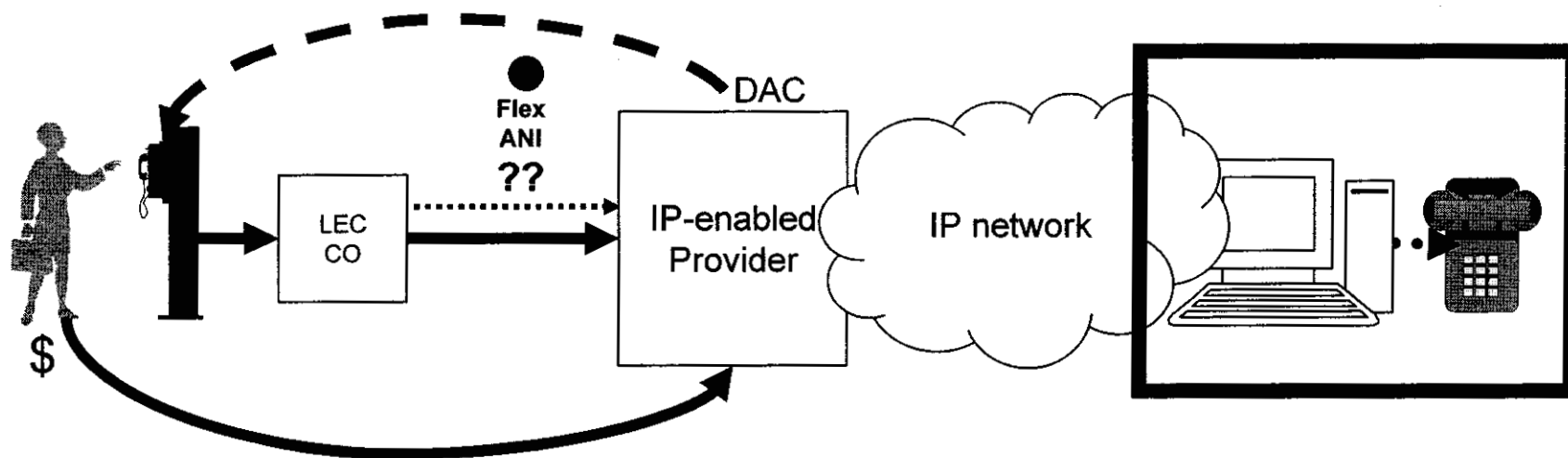
● LEC Sends Flex ANI. Unclear if IP-enabled Provider receives Flex ANI.

■ Money flow
■ Call flow
■ Information flow



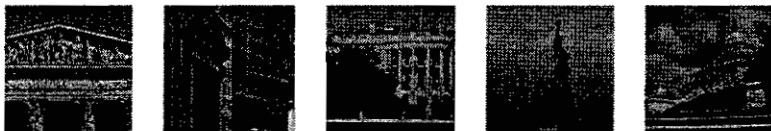
IP-Enabled DAC Call: Calling Card or Prepaid Card Over IP-enabled Provider to Computer or IP Phone

Here again, the IP-enabled Provider takes the place of the “Completing Carrier.” The only difference between this scenario and the previous slide is that here the call terminates in IP rather than on the PSTN. The non-PSTN termination should not affect PSPs’ right to DAC.



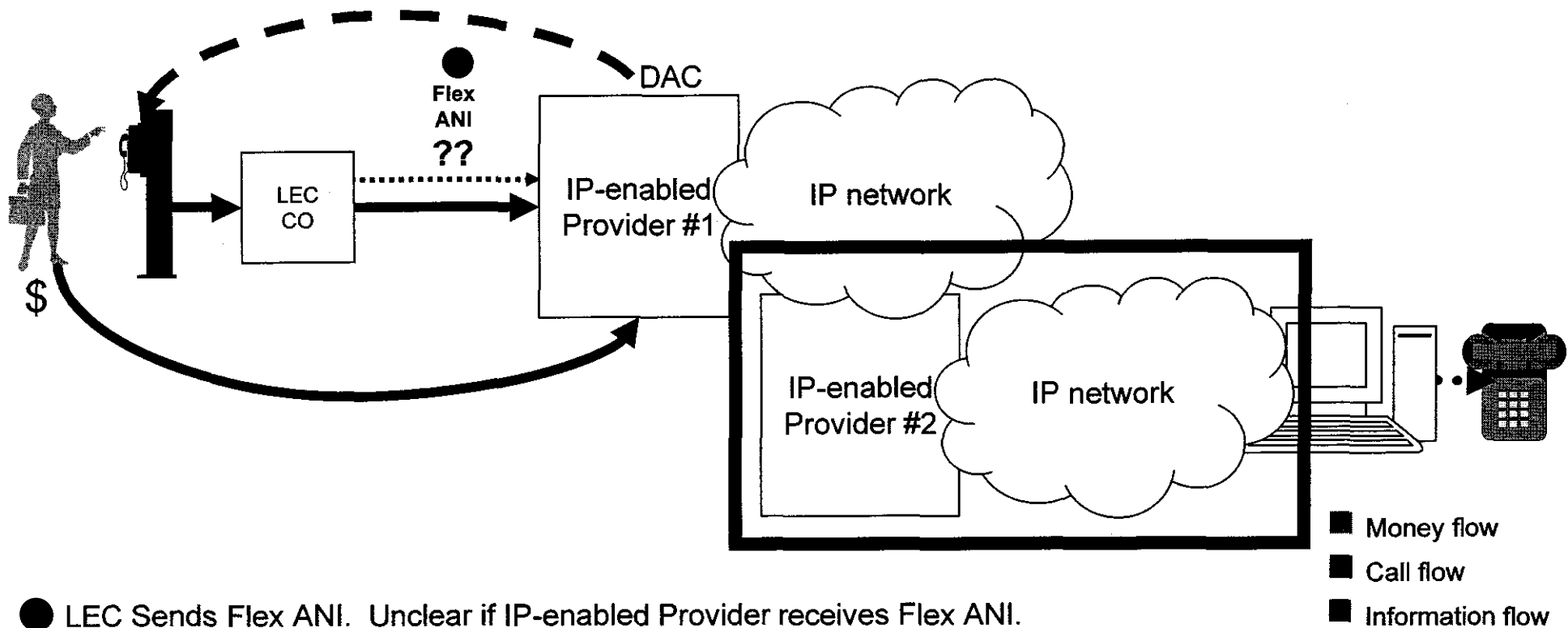
● LEC Sends Flex ANI. Unclear if IP-enabled Provider receives Flex ANI.

- Money flow
- Call flow
- Information flow



IP-Enabled DAC Call: Calling Card or Prepaid Card Over IP-enabled Provider to Second IP-enabled Provider's End User

In this scenario, the caller is using IP-enabled Provider #1's calling card to call an end user of IP-enabled Provider #2 (e.g., Vonage). IP-enabled Provider #1 takes the place of the "Completing Carrier." The presence of IP-enabled Provider #2 in the call path should not affect PSPs' right to DAC.

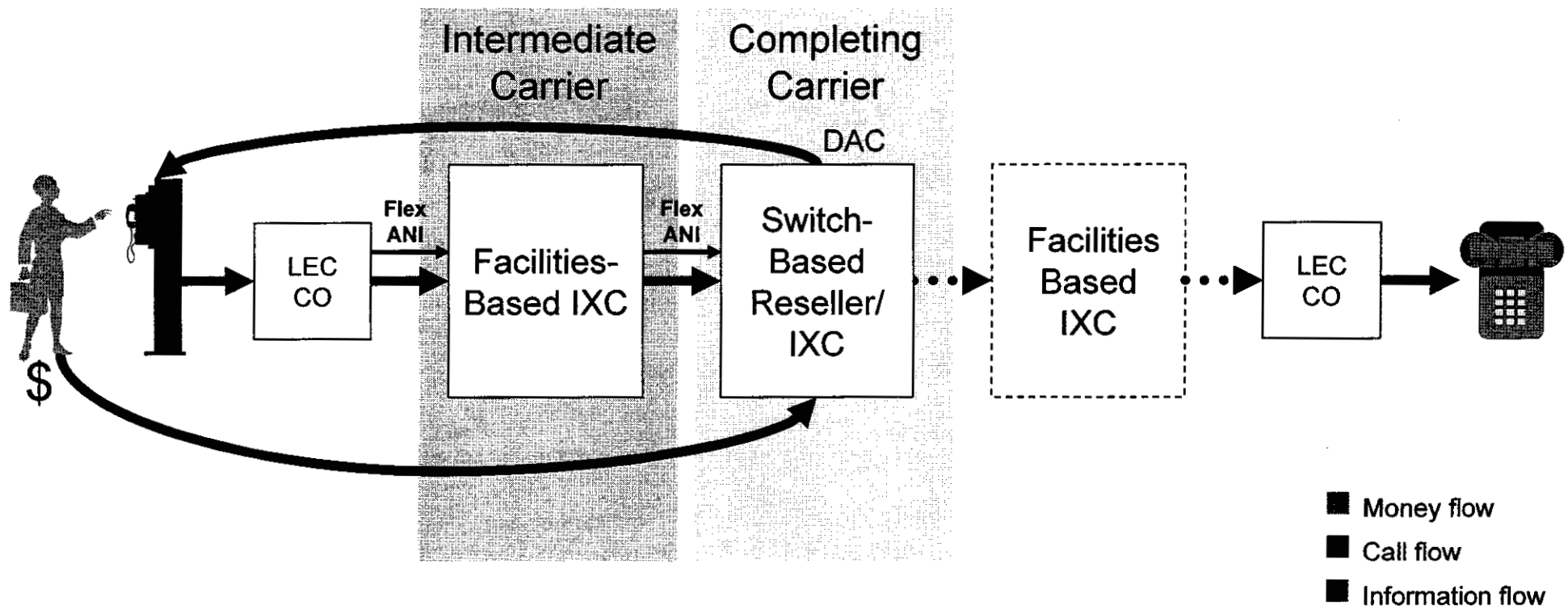


● LEC Sends Flex ANI. Unclear if IP-enabled Provider receives Flex ANI.



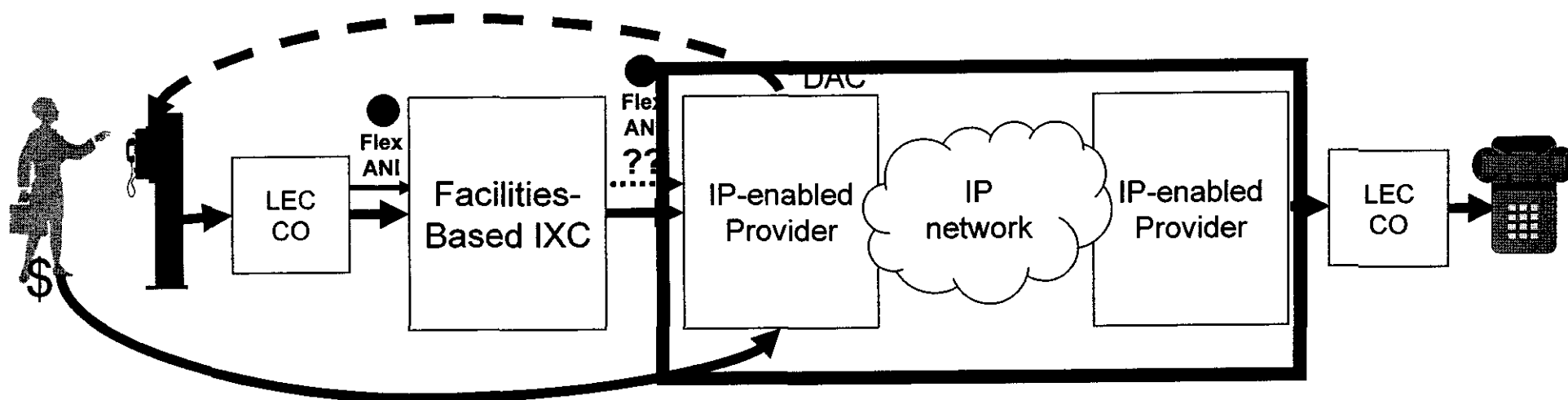
Conventional DAC Call: Calling Card or Prepaid Card Over Switch-Based Reseller/IXC

In this variation on the first conventional DAC scenario, a SBR is added to the call path in addition to the F-IXC, and is the “Completing Carrier.”



IP-Enabled DAC Call: Calling Card or Prepaid Card Over IP-enabled Provider to PSTN

Here, the IP-enabled Provider is inserted in the call path in the place of the SBR "Completing Carrier."
The caller is the IP-enabled Provider's end user. The F-IXC plays the same role as it does in the conventional SBR DAC scenario shown on the previous slide.



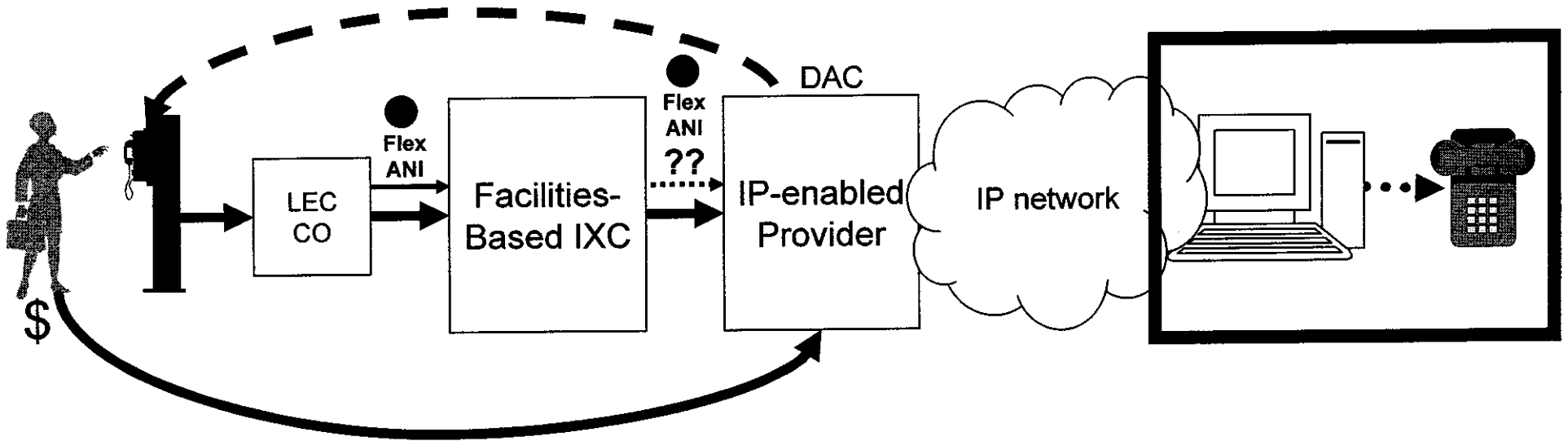
● F-IXC receives and sends Flex ANI; IP-enabled Provider may not be able to receive.

- Money flow
- Call flow
- Information flow



IP-Enabled DAC Call: Calling Card or Prepaid C to Computer or IP Phone

As in the previous slide, the IP-enabled Provider is inserted in the call path in the place of the “Completing Carrier,” and the caller is the IP-enabled Provider’s end user. The only difference is that here the call terminates in IP instead of on the PSTN.



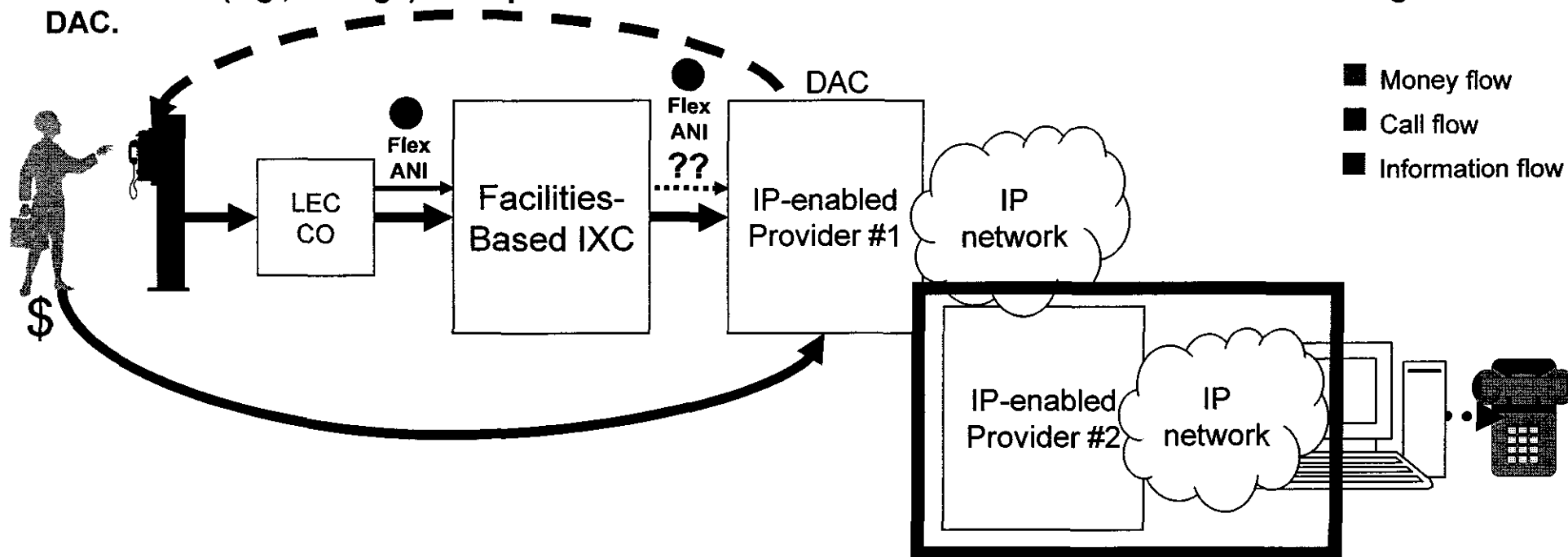
● F-IXC receives and sends Flex ANI; IP-enabled Provider may or may not be able to receive.

- Money flow
- Call flow
- Information flow



IP-Enabled DAC Call: Calling Card or Prepaid Card Over IP-enabled Provider to Second IP-enabled Provider's End User

In this scenario, IP-enabled Provider #1 is inserted in the call path in the place of the "Completing Carrier." The caller is using IP-enabled Provider #1's calling card to call an end user of IP-enabled Provider #2 (e.g., Vonage). The presence of IP-enabled Provider #2 should not affect PSPs' right to DAC.

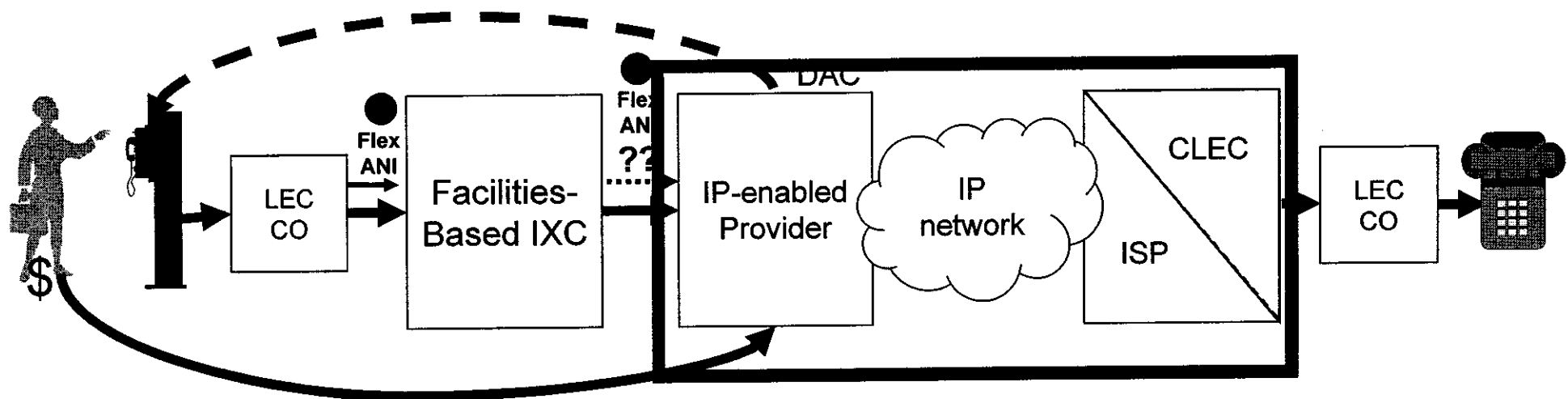


● F-IXC receives and sends Flex ANI; unclear if IP-enabled Providers are able to receive.



IP-Enabled DAC Call: Calling Card or Prepaid Card Over IP-enabled Provider to PSTN

This scenario is similar to the one on page 12. The only difference is that an ISP/CLEC hands the call to the terminating LEC, which should not affect PSPs' right to DAC.



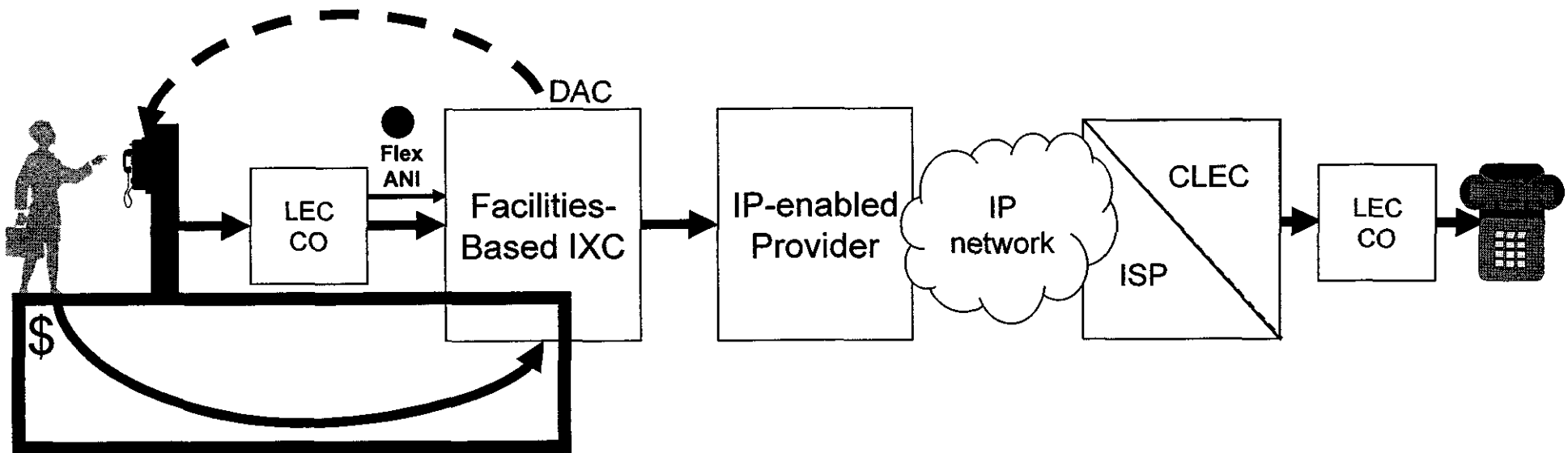
● F-IXC receives and sends Flex ANI. Unclear if IP-enabled Provider receives Flex ANI.

- Money flow
- Call flow
- Information flow



IP-Enabled DAC Call: Calling Card or Prepaid Card Where IP-enabled Provider Provides IP Transport

In this variant, the F-IXC would remain the “Completing Carrier.” Here, unlike the previous slides, the caller is F-IXC’s end user. The IP-enabled Provider provides IP transport to F-IXC.



● F-IXC receives and sends Flex ANI; IP-enabled Provider may or may not be able to receive.

- Money flow
- Call flow
- Information flow

